

IN THE MIDDLE DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

KATHRYN BAUMAN RUBENSTEIN,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	CIVIL ACTION NO.: 1:07-CV-798MHT
	)	
BETTY JO BAUMAN, ET AL.	)	
	)	
DEFENDANTS.	)	

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,**  
**FOR JUDGMENT ON THE PLEADINGS**

COME NOW the Defendants, Regions Bank; Brian Bickhaus; Pat Black; Richard Fox; Robert Birmingham; Boyd Horn; Carl E. Jones, Jr. and D. Bryan Jordan, by and through their attorney of record and, pursuant to Rule 12 (b)(6) and Rule 12 (c) of the Federal Rules of Civil Procedure (FRCP), move this Honorable Court to dismiss Plaintiff's Complaint, First Amended Complaint and Second Amended Complaint for failure to state any claim against said Defendants upon which relief can be granted. In support of this Motion, Defendants show unto the Court the following:

1. Plaintiff has failed to comply with the Order of U.S. Magistrate Judge Wallace Capel, Jr. dated September 13, 2007, by failing to timely file her Second Amended Complaint in accordance with the Court's Order. Additionally, Plaintiff has failed to plead with specificity, in any of her complaints, facts or claims against any of these Defendants as directed by the Court's Order.

2. Plaintiff purports to assert against these Defendants a federal section 1983 case based on their supposed conspiracy "to defraud and deny Plaintiff her civil rights including due process in Houston County Circuit Court Case CV-02-5063 and the subsequent appeal before the Alabama Court of Civil Appeals and the Alabama Supreme Court." Plaintiff's Complaint, as amended, fails to allege any facts or claims against any of these Defendants which would support any claim for relief.

3. Defendants, Brian Bickhaus, Pat Black, Richard Fox, Robert Birmingham, Boyd Horn, Carl E. Jones, Jr. and D. Bryan Jordan, are all either employees or former employees of Defendant, Regions Bank.

4. Even though Defendants, Brian Bickhaus, Pat Black, Richard Fox, Robert Birmingham, Boyd Horn, Carl E. Jones, Jr. and D. Bryan Jordan, are named as party Defendants in the Plaintiff's Complaint, as amended, Plaintiff fails to make any further statements or allegations in her Complaint, as amended, setting forth any facts, claims, acts, omissions, or legal theories of liability against these said Defendants.

5. Plaintiff has made a general statement in paragraph (67) of her Second Amended Complaint claiming that Defendant, Regions Bank and Joel W. Weatherford engaged Judge Larry Anderson and Sandra K. Anderson (wife of Judge of Anderson) "in compensatory bias" in Houston County, Alabama, on divers dates in 2001, 2002, and 2003. This claim fails to state a viable cause of action against Defendant Regions Bank upon which relief can be granted and

does not set forth any wrongful act committed by Defendant Regions Bank with specificity in accordance with Judge Capel's Order of September 13, 2007.

6. Plaintiff has made a general statement in paragraph (68) of her Second Amended Complaint claiming that Defendant Regions Bank engaged Judge Dale Segrest and Mrs. Phillip Dale Segrest (wife of Judge Segrest) "in compensatory bias" in Houston County, Alabama on divers dates in 2005. This claim fails to state a viable cause of action against Defendant Regions Bank upon which relief can be granted and does not set forth any wrongful act committed by Defendant Regions Bank with specificity in accordance with Judge Capel's Order of September 13, 2007.

7. Plaintiff has made a general statement in paragraph (69) of her Second Amended Complaint claiming that Defendant Regions Bank engaged Drayton Nabers, Fairfax Nabers (wife of Drayton Nabers) and/or their Foundation "in compensatory bias" in Montgomery and Jefferson Counties, Alabama, on divers date in 2005. This claim fails to state a viable cause of action against Defendant Regions Bank upon which relief can be granted and does not set forth any wrongful act committed by Defendant Regions Bank with specificity in accordance with Judge Capel's Order of September 13, 2007.

8. Plaintiff has made a general statement in paragraph (70) of her Second Amended Complaint claiming that Defendant Regions Bank engaged Judge Bernard D. Smithart and Elizabeth Smithart (wife of Judge Smithart) "in compensatory bias" in Bullock County, Alabama, on divers date in 2006. This claim fails to state a viable cause of action against Defendant Regions Bank

upon which relief can be granted and does not set forth any wrongful act committed by Defendant Regions Bank with specificity in accordance with Judge Capel's Order of September 13, 2007.

9. Plaintiff has made general statements in paragraph (73) of her Second Amended Complaint claiming that Defendant Regions Bank and Judge Larry Anderson "conspired" to and sought to deny Plaintiff her rights under U.S. Const. Amend. XIV, Section 1 in Houston County, Alabama. This claim fails to state a viable cause of action against Defendant Regions Bank upon which relief can be granted and does not set forth any wrongful act committed by Defendant Regions Bank with specificity in accordance with Judge Capel's Order of September 13, 2007.

10. Plaintiff has made general statements in paragraph (76) of her Second Amended Complaint claiming that they "conspired" to deny Plaintiff discovery in CV-02-5063, on or about 6-23-2005 in Houston County, Alabama when Plaintiff filed a Motion to Compel regarding discovery from "Regions Bank which was denied by Judge Segrest by lack of a response which harmed Plaintiff by denying her pretrial discovery and due process as allowed under U.S. Const. Amend. XIV, Section 1." This claim fails to state a viable cause of action against Defendant Regions Bank upon which relief can be granted and does not set forth any wrongful act committed by Defendant Regions Bank with specificity in accordance with Judge Capel's Order of September 13, 2007.

11. Plaintiff has made general statements in paragraph (74) of her Second Amended Complaint claiming that that Regions Bank, on or about 6-16-

2005 sought to deny Plaintiff discovery by moving to extend time to respond to Plaintiff's Request for Production of Documents which Judge Anderson granted Regions Bank. This claim fails to state a viable cause of action against Defendant Regions Bank upon which relief can be granted and does not set forth any wrongful act committed by Defendant Regions Bank with specificity in accordance with Judge Capel's Order of September 13, 2007.

12. Plaintiff's Complaint, as amended, is in all respects legally deficient under any set of facts that she can prove consistent with her Complaint.

13 The claims against these Defendants, if any, as set forth in Plaintiff's Complaint, as amended, are barred by the doctrine of res judicata, collateral estoppel and the *Rooker-feldman* doctrine.

14. Said Defendants reserve the right to seek sanctions against the Plaintiff and reimbursement for attorney's fees and costs pursuant to Rule 11 of the FRCP.

**WHEREFORE**, based on the foregoing, said Defendants request and pray that this Court grant their Motion to Dismiss. Defendants pray for such other, different and further relief as the Court deems appropriate and reasonable under the circumstances.

Respectfully submitted,

**FARMER, PRICE, HORNSBY, &  
WEATHERFORD, L.L.P.**

/s/ Joel W. Weatherford

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Wade Hampton Baxley, Don P. Bennett, Bethany L. Bolger, Jack Michael Conaway, James Davis Farmer, Robert Merrill Girardeau, William Wallace Hinesley, William Lovard Lee, III, Steve G. McGowan, Virginia Lynn McInnis, R. Cliff Mendheim, F. Chadwick Morriss, William W. Nichols, Richard H. Ramsey, III, Jere, C. Segrest, Philip Dale Segrest, Jr., Thomas Grant Sexton, Jr., Gary Clayborn Sherrer, Elizabeth Smithart, John A. Smyth, III, Joseph E. Stott, Anne Stone Sumblin.

I further certify that I have served the following by placing a copy thereof in the United States Mail, postage prepaid and properly addressed:

Kathryn Bauman Rubenstein  
Post Office Box 2243  
Dothan, AL 36302

/s/ Joel W. Weatherford  
Of Counsel